IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8764 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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JAYABEN DEVSHUIBHAI CHOTANI PRAJAPATI & 1 - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR HARIN P RAVAL for Petitioner(s) : 1 - 2.
MS MAITHILI MEHTA, ASST. GOVERNMENT PLEADER for Respondent(s) : 1,
MR NIKHILESH J SHAH for Respondent(s) : 2,
NOTICE SERVED BY DS for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 11/06/2007

ORAL JUDGMENT

1. The petitioners have preferred the present Special Civil Application under Article 226 of the

Constitution of India for an appropriate direction, writ or order quashing and setting aside the decision of respondent No.3.- Town Planning Officer of allotting Final Plot No. 635 admeasuring 21.90 Sq.Mts. forming out of original Plot No. 657 carved out of City Survey No. 3061 paiki bearing old Municipal Census No. 627/1, Chalta No. 141, City Survey No. 125 situated in Old Anjar Municipality Ward No.8 which is now given Municipal Property No. 1057 situated in Anjar Municipal Ward No.3(new) to any other person other than petitioner No.1 herein. It is also prayed for directing respondent No.3- Town Planning Officer to hold an inquiry as regards the ownership of the aforesaid property. It is also further prayed for directing respondent No.3 Town Planning Officer to allot aforesaid Final Plot No. 635 to the petitioner.

2. The dispute is with regard to land admeasuring 21.90 Sq.Mts. forming part out of the original Plot No.657 carved out of City Survey No. 3061 paiki situated in old Anjar Municipality Ward No.8. The petitioners' claim to be the owner of the

said land/property, which according to them they have purchased from one Shri Palabhai Ramabhai under the registered document of sale registered at Sr.No. 121 on 08.01.1998.

3. That after the devastating earthquake on 26.01.2001 due to which people were buried in the debris of the buildings and of narrow streets, the Government decided to constitute a special planning for the walled areas of Anjar under the Gujarat Town Planning and Urban Development Act, 1976 (“the Act” for short). That by notification dated 09.05.2001 Anjar Area Development Authority (“AADA” for short) was constituted and a declaration of intention to prepare draft Town Planning Scheme Nos. 1 to 4 was published as required under the provisions of the Act and the Gujarat Town Planning and Urban Development Rules, 1976 (“the Rules” for short), and after following the required procedure as required under the provisions of the Act, i.e. a declaration of intention to prepare draft Town Planning Scheme, preparation of preliminary Town Planning Scheme, Town Planning Scheme No.1, Anjar came to be sanctioned and

plots came to be reconstituted. It is required to be noted that property registered card Survey No. 3061 Paiki with the original Plot No. 657 belongs to the Government as per the revenue records. Thus, in the revenue records, the name of Government is mentioned as owner of the aforesaid land. Original Plot No. 657 carved out of Survey No. 3091 paiki has been reconstituted and the entire land bearing City Survey No. 3061 is reconstituted and reallocated as Final Plot No. 635 inclusive of lands claimed by the petitioners. Being aggrieved and dissatisfied with the decision of the respondents more particularly respondent No.3 – Town Planning Officer of allotting Final Plot No. 635 admeasuring 21.90 Sq.Mts. forming out of original plot No. 657 carved out of City Survey No. 3061 paiki bearing old Municipal Census No. 627/1 under the finalized sanctioned Town Planning Scheme No.1, Anjar the petitioners have preferred the present Special Civil Application under Article 226 of the Constitution of India.

4. It is the contention on behalf of the petitioners that they have purchased the aforesaid

land in question admeasuring 21.90 Sq.Mtrs. by registered Sale deed from one Shri Palabhai Ramabhai in the year 1998. However, prior thereto at the time of city survey inquiry, the aforesaid property was not surveyed, therefore, in the revenue record, the Government was shown as owner. Therefore, it is submitted that at the time of draft Town Planning Scheme, objections were invited and at the time of submitting draft Town Planning Scheme No.1, Anjar, it was pointed out that the aforesaid property is of their ownership and the name of Government is shown as owner by mistake and in spite of that aforesaid property admeasuring 21.90 Sq.Mts. carved out of City Survey No. 3061 paiki has been allotted under the reconstitution in Final Plot No. 635 which is absolutely illegal. It is submitted that in fact necessary inquiry was required to be held by the Town Planning Officer and the Town Planning Officer has failed to perform his duty and therefore, it is requested to grant the reliefs as prayed for.

5. The petition is opposed by the State Government as well as the AADA. In the affidavit-in-

reply filed by respondent Nos. 1 and 3- State Government, it is submitted that so far as the State Government is concerned, necessary procedures as required to be followed and/or complied with while sanctioning the preliminary draft Town Planning Scheme has been complied with and after considering the objections, suggestions, site situation and record of rights, the Town Planning Officer finalized the said Preliminary Town Planning Scheme No.1, Anjar and declared his decision of the said Preliminary Town Planning Scheme No.1, Anjar on 19.05.2003. It is also further submitted in the reply that immediate action have been started for the redevelopment and reconstruction of earthquake affected Cities by the State Government on war footing basis for badly earthquake affected Anjar City and draft D.P. and draft Scheme were prepared by AADA. The said Draft D.P. was sanctioned by the State Government on 17.07.2002, appointed Town Planning Officer to finalize and Town Planning Officer declared award of Preliminary Scheme and the State Government sanctioned the said Preliminary Scheme on 21.01.2003 and the same came into force on the same day i.e.

21.01.2003. It is submitted that it has become part of the Act and the said action has been taken as per the provisions of the Act and the Rules in larger general public interest.

6. A detailed affidavit-in-reply is filed on behalf of the AADA pointing out detailed procedure followed at every stage right from the declaration of intention till finalization of the Preliminary Town Planning Scheme and Town Planning Scheme No.1, Anjar inclusive of objections and suggestions invited. It is submitted that under Section 67 of the Act, all the lands required by AADA shall vest absolutely free from all encumbrances from 21.01.2003 i.e. the day on which State Government accorded sanction to the Preliminary Town Planning Scheme and the Town Planning Scheme No.1, Anjar came into force. It is further submitted that as per Section 68 of the Act and Rule 33(1)(a), notice was issued to the petitioner for vacating the land and handing over the possession to AADA. It is submitted that as per the property Registered Card Survey No. 3061 paiki with Original Plot No. 657 belongs to the Government. It

is further submitted that original Final Plot No. 655 has been reconstituted into Final Plot Nos. 635 and 655 and the said Original Plot No. 655 in Survey No. 3058/P is of the ownership of Shri Ramji Keta Harijan and the original Plot No. 656 as per PRC and as reflected in the chart belongs to Shri Harijan Dana Jivan Meghwal. It is further submitted that original Plot Nos. 655, 656 and 657 have been reallocated as Final Plot Nos. 636,655, 656 and 657. It is also further submitted that by means of individual notice as well as public notice, the persons affected by the Draft Town Planning Scheme were informed and requested to make representation about their suggestions/objections and no representation has been received from the petitioner. It is also submitted that as per the record of Town Planning Officer dated 23.09.2002 representative of Deputy Collector / Mamlatdar had remained present before the Town Planning Officer and informed the Town Planning Officer that the land in question of City Survey No. 3061/P is in the name of the Government. It is also submitted that once the Town Planning Scheme becomes final, it becomes part of the Act, therefore, the

same cannot be challenged and even otherwise the affected parties who are likely to be affected, if the reliefs which is sought in the present Special Civil Application is granted, are not party to the present proceedings. Therefore, it is requested to dismiss the present Special Civil Application.

7. Heard the learned Advocates appearing on behalf of the respective parties.

8. That there has been vast human life destruction in the area due to devastating earthquake on 26.01.2001 and due to which people were buried in the debris of the buildings and of narrow streets. That the Government and the NGO's had immediately started a rescue operation but due to narrow streets the Government could not reach through the streets to work in the City and start rescue operation in time as a result whereof many people lost their lives. Therefore, the Government decided to constitute a special planning for the walled areas of Anjar under the Act, 1976. That amendment was carried out in the Act by Act No. 16 of 2001 and by Notification dated

09.05.2001 AADA was constituted. That as required under Section 41(1) of the Act, AADA consulted Chief Town Planner before declaration of intention. A Resolution dated 03.05.2002 was passed by AADA for declaration of intention to prepare Town Planning Scheme Nos. 1 to 4. That a declaration of intention to prepare draft Town Planning Scheme No. was published in the local newspaper as well as in the Government Gazette as required under Rule 16(1) of the Rules. That as required under Section 41(2) of the Act, a copy of advertisement publishing declaration of intention was dispatched to the State Government along with plan. That individual notice as well as public notice were given for owners meeting as per Rule 17 and accordingly the owners meeting was held on 23.05.2002. As per the affidavit-in-reply, tentative proposals of Draft Town Planning Scheme was explained to the owners of the land with the help of map and on computer screen. That after considering the suggestions and objections received by AADA, plan was modified and the Resolution dated 14.06.2002, Draft Town Planning Scheme was made by AADA as required under Section 42(1) of the Act. That as per

Section 42(1) and Rule 18(1), the Draft Town Planning Scheme was published in the Government Gazette on 27.05.2002 and was also published in the local newspaper dated 25.05.2002. That the suggestions and objections were invited by AADA to the Draft Town Planning Scheme and after considering the suggestions and objections received, they were considered as required under Section 47 of the Act and the Draft Town Planning Scheme was modified and was submitted to the State Government as required under Section 48(1) of the Act for its sanction. That the State Government sanctioned the Draft Town Planning Scheme vide Notification dated 17.07.2002 and the Town Planning Officer was appointed by the State Government as required under Section 50 of the Act to finalize the sanctioned draft Town Planning Scheme and submit preliminary Town Planning Scheme to the State Government for sanction. That the State Government accorded the sanction to the Preliminary Town Planning Scheme No.1 vide Notification dated 21.01.2003 and the Town Planning Scheme came into force since 21.01.2003. Thus, as per the provisions of the Act, once the Draft Town Planning Scheme has

been sanctioned, it has become part of the Act and as held by the Division Bench of this Court in the case of **Kashiben Wd/o Pitamber Devchand & Anr. v/s. State of Gujarat & Anr.** reported in **30(2) GLR 1176**, once it has become part of the Act, the same cannot be challenged.

9. It is also required to be noted that the lands in question has now become part of the Act and/or become Final Plot No. 635 under the finalized Town Planning Scheme No.1 and the original Plot Nos. 655, 656 and 657 are reallocated and converted in Final Plot Nos. 635, 655, 656 and 657 and if the prayer in the present Special Civil Application is granted, the same is likely to affect other adjoining land owners. It is also required to be noted that those persons who are likely to be affected, if the relief in the present Special Civil Application is granted, are not party to the present proceedings. It is also required to be noted that at the relevant time when the draft Town Planning Scheme was submitted and the intention to prepare draft Town Planning Scheme declared, admittedly, in the revenue

records, the Government is shown to be the owner and accordingly rights of the parties are considered as per the revenue records. It is also required to be noted that though initially petitioner No.2 submitted his objection at the time of draft Town Planning Scheme, however, after considering the objection draft Town Planning Scheme was submitted to the State Government and thereafter draft Town Planning Scheme was sanctioned. Draft Town Planning Scheme was published, suggestions and objections were invited but, however, nobody remained present on 14.11.2002 and thereafter, preliminary draft Town Planning Scheme was sent to the State Government which came to be sanctioned in January, 2003 as stated above considering the suggestions and objections received by AADA and the Town Planning Officer. Thus, when all the procedure as required under the provisions of the Act and the Rules have been followed and the Draft Town Planning Scheme has become final in the larger public interest after devastating earthquake which took place on 26.01.2001, it cannot be said that there is illegality committed. It is required to be noted that as such the petitioners have not

challenged the draft Town Planning Scheme No.1, which has become final and even otherwise as stated above, once the Town Planning Scheme has become final it becomes part of the Act and the same cannot be challenged unless there is defect and the procedure as required under the Act is not followed.

10. Under the circumstances, and more particularly, when the Town Planning Scheme No.1 has become final, it has become part of the Act and when entire procedure has been followed as required to be followed under the provisions of the Act and the Rules, it cannot be said there is any illegality committed by the respondents which calls for interference of this Court in exercise of powers under Article 226 of the Constitution of India.

11. For the reasons stated above, the petition fails, it is required to be dismissed and accordingly, it is dismissed. Notice discharged.

[M.R.Shah, J.]

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